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THE RETROACTIVE EFFECT OF THE 1906 COMMERCE AMENDMENT REGARDING COMPENSATION FOR TRANSPORTATION.

The decision in the case of the Louisville & Nashville R. Co. v. Mottley, 31 Sup. Ct. 265, seems to us to introduce a rare, if not novel, principle in statutory construction, with reasoning for its application to the statute involved somewhat unsatisfactorily.

The facts of this case show, that in 1871 Mottley and his wife received personal injuries in a railroad collision. A written agreement for settlement was entered into between them and the railroad, whereby the latter was "to issue free passes on said railroad and branches now existing or to exist" to them "for the remainder of the present year, and thereafter to renew said passes annually during the lives of said Mottley and wife, or either of them."

The railroad lived up to its agreement until 1906, and then offered passes for intrastate passage, claiming it was forbidden by the Commerce amendment to do more than this. The Mottleys brought suit to require the railroad "specifically to execute" said agreement and issue the same passes as formerly. The Kentucky courts, including the Court of Appeals, ruled in their favor. This ruling the Supreme Court reverses in an unanimous decision.

It may be admitted, as Justice Harlan, speaking for the court holds, that this agreement was not protected by reason of its conferring a vested right, because it was entered into subject to the rightful power of Congress to displace its execution, as it only was permissively entered into at the time. If such agreements were not then noticed by Congress as obstructions and under the conditions then existing might not even have been obstructions, in interstate commerce, still if they became obstructions and especially if they were declared to be obstructions, governmental power ought not to be arrested in their behalf.

The question then before the court sifts down to what was the intention of Congress in declaring that no common carrier subject to the commerce act shall "issue or give any interstate free ticket, free pass or free transportation for passengers," nor shall such "carrier charge or demand or collect or receive a greater or less or different compensation for such transportation for persons or property."

Certainly it would seem that what is said about free tickets and free passes would not exclude this transportation, because while the agreement calls the tickets the road agrees to issue "free passes," it also appears that they were to be given for a valuable consideration. Before this amendment was passed a very great number of passes were being given which came properly under the description of "free passes," because they were either intended as gratuities or to have an illegitimate influence. These were not contracted for, and a great outcry and wide sentiment existed against the continuance of the practice of issuing them. There was no sentiment against such as were contracted for upon valuable consideration.

This portion of the amendment might well, therefore, have been construed as purely prospective, for thus it would have extensive scope and strictly only such passes should be called "free passes"

Coming then, to the section which forbids a carrier "to charge or demand or collect or receive a greater or less or different compensation" than in the published tariff for the transportation of persons or property, can we not refer back to the section in regard to free passes, in order to argue that this section, like that, had merely a prospective operation?

We are not contesting the power of Congress to make its regulation operate retrospectively on rights acquired, or, as may be more strictly stated, permitted to be taken advantage of, but the question comes whether Congress, in proposing a regula-

tion for the future, meant to tear up, root and branch, all semblance of right, which by acquiescence it had invited people to consider valuable.

The principle of estoppel is one of the well established principles of law. Its foundation is in equity, good faith, justice and common honesty. While governmental power may override it, it should not be presumed to be inconsiderate of it, if any interpretation of its command is consistent with its recognition. In other words, it may be said that, just as estoppel may not bind it in law, the higher should be the presumption that it acts in general good faith.

This brings us to a view of the evil that was to be corrected. There were all kinds of contracts made for fares and freight, whereby advantage was gained by individuals and corporations over those not thus contracting with carriers. Thus the equality aimed at was interfered with. This amendment in that view has a definite purpose, and one so very extensive as to fully justify its enactment.

The evil of such contracts was not a crying one, or it would have been corrected long ago. But, if it was not, why should sporadic instances of contracts made in good faith be considered by Congress other than merely negligible?

Justice Harlan says that this kind of a construction would make it so "that individuals and corporations could by contracts between themselves, in anticipation of legislation, render of no avail the exercise by Congress, to the full extent authorized by the Constitution, of its power to regulate commerce."

We think this may be answered by saying that it comes back to our first question: Did Congress intend to exercise its full power on this subject? If it did, it could easily have said so. If it did not fear anticipation of legislation, why should the court fear it? It was not the province of the court to interpolate a fear Congress did not seem to feel as, if it did, it would have been so easy to have expressed it and thus have resolved all doubt in construction.

The opinion in the case of Chicago I. & L. Ry. Co. v. United States, 31 Sup. Ct. 272, was handed down the same day as that in the Mottley case, but the contract for transportation for advertising there considered appears to have been entered into since 1906. Of course, it came under the law in its prospective operation. It would, however, have been deemed invalid, under the Mottley case, had it been entered into before the law was passed.

NOTES OF IMPORTANT DECISIONS

CORPORATIONS—LACHES BARRING SUBSCRIBER FOR STOCK FROM RIGHT OF RESCISSION WHEN CORPORATION BECOMES INSOLVENT.—The English rule and that of some of the states is said by Kentucky Court of Appeals to be that a subscription for stock "cannot be repudiated on the ground of fraud after the corporation has become insolvent and made an assignment, though the fraud was not discovered before insolvency, and there was no laches in failing to discover it." But that rule is not recognized, in its severity, in that state but generally, it is said an assignee in insolvency stands in the shoes of the assignor and a subscriber sued upon his subscription can set up the same defenses against the one that he might have set up against the other.

But this general rule still is subject to qualification, if there has been any failure to exercise due care in subscribing or acquiescence afterwards in the subscription, without further investigation, so that the rights of innocent third persons, for example, creditors, may be affected. Reid v. Owensboro Sav. Bk. & Trust Co., 132 S. W. 1026.

The reasoning of the court is to the effect that it need not be shown, in enforcing this exception to the rule that an assignee in insolvency stands in the shoes of his assignor, that creditors were misled, but the presumption will be indulged that they acted on the appearance of things which a subscription, with a double liability back of it, assisted to create and maintain. The court says: "It is entirely probable that persons were influenced to give the bank credit or put their money on deposit with it, upon the faith of the knowledge that these shareholders were interested in it, as it is a matter of common knowledge that corporations do obtain credit and do get business from friends and acquaintances of stockholders on the strength of their connections with it."

The only trouble with the Kentucky court is that it should ever have committed itself to

any milder rule than that which is stated to be followed in England and some of the states. But having done so it does quite well in endeavoring to keep it within very strict bounds.

It looks very plain to us, that if there were no double liability, a subscriber's right to rescission and to have what has been paid refunded, should be a debt of lower dignity than that of a depositor or ordinary creditor. When there is double statutory liability, it must be thought that the statute means that the stockholder's general status, so far as creditor's are concerned is in no way distinguished. A formal relationship has been assumed, and, if a subscriber has been betrayed by corporate officials, either his judgment or overweening confidence is to blame. The law should not try to unravel these things at the possible expense of innocent third persons.

EXTRA-TERRITORIAL ENFORCEMENT OF STATUTES IMPOSING LIABILITIES ON STOCKHOLDERS.

I. Introduction.—Upon the decline of the papal power, the universal idea of a common superior, exercising sovereign authority over all nations, disappeared, to be later supplanted by principles which form the very basis of modern international conceptions. Thus the utter lawlessness which prevailed during this period may be called the progenitor of the recognition of the "Independence of States" and the "territorial sovereignty of rulers." The import of these principles is that every state is free and independent. Each sovereign is all-powerful; within his territory his edicts or laws are capable of being enforced with the utmost rigidity but any attempt by him to execute them in a foreign state would constitute an encroachment on the independence of such state.

When the American Constitution was adopted, the states being hampered by the "barbaric and tribal" ideas prevalent at that time, placed themselves, in respect to matters of interstate law, in the attitude of foreign nations in friendly intercourse with each other. The laws of one state have no more effect in a sister state than have the laws of England. Should one state attempt to give force to a legislative enactment of its own in another state, it would be justly and properly resented.[1] But in some instances a state will of its own accord enforce the laws of another state or nation. This is done, not through any convention or agreement and not so much on account of comity extended to such state or nation, but because justice and policy demand that in the interpretation and enforcement of transactions possessing a foreign element, that the foreign law govern. When a contract is entered into in a particular country, the interpretation and effect of the contract is determined by the laws of that country, even in case the contract is in litigation in the courts of another country.

When a person subscribes for stock in a corporation, or in any other way becomes a stockholder, it is generally admitted that the agreement made and extent of the attendant liabilities are to be determined by the laws of the state where the corporation is domiciled.[2] This whether the person becoming a stockholder was in the state at the time the agreement was made or outside. If outside, he is theoretically presumed to have gone into the state to make the agreement. Thus a stockholder, if liable at all for the debts of a corporation, is only liable as provided by the laws of the state where the corporation exists, irrespective of where he himself resides, or where the liability is sought to be enforced.

The stockholders of a corporation are usually widely scattered; some or all of them may be non-residents of the state which created the corporation. In order to enforce against a stockholder, his individual liability for the unpaid debts of the corporation, jurisdiction over his person must be obtained in some mode. Due process of law requires personal service; service by publication will not suffice.[3] Thus making it impossible to sue a non-resident stockholder in the state of corporate domicile, unless personal service

(1) 33 Kas. 194.
(2) 142 Mass. 349, 26 N. Y. 134.
(3) 144 U. S. 41.

has been waived; by voluntary appearance in court,[4] or by prior agreement, and service is had upon a person within the jurisdiction as his agent. Since a stockholder's statutory liability is imposed by the laws of the state which created the corporation, since laws do not operate proprio vigore outside the territorial jurisdiction of the state enacting them and since a state will not dare attempt to execute its laws in another state, a creditor seeking to enforce a statutory liability against a non-resident stockholder, who has not waived personal service, must go into the courts of the state in whose territorial jurisdiction such stockholder resides, having served the stockholder with valid notice, ask the courts of that state to take notice of and give effect to a foreign law. This presents the important question—when and under what circumstances will the courts of a state enforce against its citizens, who are stockholders in foreign corporations, liabilities imposed by the laws of the foreign state where the corporation is domiciled. But first—let us determine the general nature of liabilities imposed by states upon stockholders of corporations created by such state.

Perhaps the greatest incentive for incorporation is that by so doing several persons can join together their moneys or property or both and enter into a common enterprise and each only be liable for a limited amount. At common law stockholders are liable for the unpaid corporate debts, only to the extent of their unpaid subscriptions.

Many states, however, have seen fit to increase the liabilities of stockholders for the benefit of corporate creditors. Statutes of these states prescribe that stockholders of certain corporations, in case of insolvency of corporations, shall be liable for its debts, up to a certain amount over and above their common law liability. The liability thus created is in the nature of an indemnity to the creditors, but technically it is generally held the stockholders are neither sureties nor guarantors.[5] Extension of time does not release them. This additional liability is sometimes an absolute liability and sometimes accrues only in case of neglect of duty; it may be imposed by state constitution, by statute or in the charter granted by the state to the incorporators. The liabilities of bank stockholders have been increased in most of the states and of manufacturing and mercantile corporations in a fewer number.

II. Contractual Liabilities Enforceable Everywhere.—If the statutory liability sought to be enforced against a stockholder of a foreign corporation is in its nature absolute or contractual, it will be enforced in almost any state where such stockholder may be found,[6] subject to exceptions hereafter explained.[7] Thus a creditor of a corporation may maintain an action against a stockholder in another state under a statute declaring that "all stockholders (of certain corporations) shall be severally and individually liable to the creditors of the company in which they are stockholders, to an amount equal to the amount of stock held by them respectively, for all debts and contracts made by such company, until the whole amount of capital stock shall have been paid in and a certificate thereof recorded."[8]

III. Penal Laws Strictly Local.—If a statute creating individual liability of stockholders is penal in its nature it will not be enforced outside of the sovereignty enacting it.[9] A state while willing to enforce the contractual liabilities of stockholders in foreign corporations, as they enforce all other contractual liabilities, yet as Chief Justice Marshall says—"The courts of no country execute the penal laws of another," as it would in effect be aiding a foreign country punish its wrong doers.

The federal courts have no authority to give effect to the penal laws of one state while sitting in another, nor will the fed-

(4) 195 U. S. 113.
(5) 2 Denio, N. Y. 119, 51 Ohio St. 256.
(6) 98 Pa. St. 505.
(7) Sec. VII.
(8) 109 U. S. 371.
(9) 33 Kas. 194, 95 U. S. 714.

eral courts ever execute the penal laws of a state,[10] nor can the state courts enforce the penal laws of the National Government.[11]

The "Full faith and credit" clause of the federal constitution does not require a state to accept and enforce a judgment obtained in a foreign (sister) state, without inquiring into the nature of the action. If the judgment was recovered on a penal statute it will not be enforced in such state.[12]

IV. What is a Penal Law in International Sense.—It is not always easy to distinguish liabilities which are penal in nature from those which are contractual, and just what laws are penal in the sense that they will not be enforced extra-territorially is the source of much conflict. But there are two classes of statutes about which the courts are agreed, both state and federal. First—where the obvious intent of the legislature, which enacted it, is to impose upon the stockholders an absolute liability, analagous to, though less in extent than that to which partners are subject, (i. e., jointly and severally for all debts contracted by firm), such statute is not penal, but is in its nature contractual or "personal and may be enforced as other personal obligations are enforced, in any place where the person sought to be charged is found.[13] Second—where the express purpose of the statute is to furnish a right of action for an offense against the public justice of the state; such law is penal and will not be enforced outside of the state which enacted it.[14]

The class of statutes about which the courts are in conflict are those which make shareholders or directors liable for the debts of the corporation for some neglect of duty. Inasmuch as they furnish a remedy to a creditor who has suffered through the loss of corporate assets they sound of a contractual nature, but as they impose a burden upon the stockholders or directors as a consequence of some neglect of duty, they appear penal.

V. Same "Strict View."—Most of the state courts have taken a strict view as against the extra-territorial enforcement of such laws on the theory that they are penal laws. Statutes making stockholders liable for unpaid debts of corporation, for failure to give a certain notice specified therein,[15] or liable for certain contracts which the corporation is forbidden to make,[16] or making directors liable for failure to file certain reports,[17] or for contracting corporate debts beyond amount of capital paid in,[18] have been held to be penal and the liabilities imposed thereby not enforceable outside of the state enacting them.[19]

VI. Same "Liberal View."—But there is a growing tendency to hold these statutes remedial and not penal in the sense that they will not be enforced extra-territorially. The state as such is in no way interested in the enforcement of these liabilities, and it is to statutes which a foreign sovereignty has enacted for its own benefit or protection that the strict doctrine of not enforcing the penal laws of another country is primarily applicable.[20]

The question whether or not a given law is penal in the international sense is one of general jurisprudence and the federal courts are not bound to follow the local decisions of the state Courts.[21] Thus the Supreme Court of the United States[22] and also a few of the state courts[23] have adopted views more favorable to the enforcement extra-territorially of statutes imposing liability for neglect of duty, declaring that such statutes create liabilities clearly remedial thus arising out of contract. In the case of Huntington vs Attrill,[24] which came before the United States Supreme Court by writ of

(10) 146 U. S. 657, 127 U. S. 265.
(11) 17 Johns N. Y. 4.
(12) 127 U. S. 265.
(13) 46 N. Y. 119.
(14) 40 Fed. R. 8.
(15) 26 Mo. 371.
(16) 7 Ohio St. 341.
(17) 1[0] Allen, Mass. 438.
(18) 33 Md. 487.
(19) Thompson on Corp., Vol. III.
(20) Story Conf. L., Sec. 621.
(21) 146 U. S. 657.
(22) 109 U. S. 371, 10 Fed. R. 342.
(23) 69 Pac. R. Cal. 77.
(24) 146 U. S. 657.

error from the highest court of the state of Maryland, upon the question whether the Maryland court had given full faith and credit to the judgment obtained in New York, upon a statute making officers of certain corporations liable to corporate creditors for signing a false certificate as to the amount of capital stock, the United States Supreme Court was thus called upon to decide whether this New York law was penal in the sense that it would not be enforced extra-territorially. In his opinion Mr. Justice Gray says—"The question whether a statute of one state which in some aspects may be called penal, is a penal law in the International sense, so that it cannot be enforced in the courts of another country, depends upon the question whether its purpose is to punish an offense against the public justice of the state or to afford a private remedy to a person injured by the wrongful act. As the statute imposes a burdensome liability upon the officers it may well be considered penal in the sense that it should be strictly construed. But as it gives a civil remedy at the private suit of the creditor only, and measured by the amount of his debt it is as to him clearly remedial. To maintain such a suit is not to administer a punishment imposed upon an offender against the state, but simply to enforce a private right secured under its laws to an individual. There is no just ground, on principle for holding such a statute to be a penal law, in the sense that it cannot be enforced in a foreign country." Thus the liberal view, i. e., that only those laws which a sovereignty makes for its own benefit and protection are penal in the sense that they will not be enforced extra-territorially is the better and more logical of the two.

VII. Contractual Liabilities Not Always Enforced.—Statutes creating liabilities clearly of a contractual nature, will not be enforced in a state other than the enacting state if such statute offends the policy of the forum, or if the statute also provides a special remedy, or if the procedure of the forum is not applicable to such cause, or if the foreign statute requires a suit in equity or if the party seeking to enforce the liability has not complied with all the conditions prescribed by the statutes of the state creating the liability.[25] Taken up in detail below.

VIII. Foreign Statute Contrary To Public Policy.—Where the foreign law offends the policy of the forum, as expressed in legislative enactment or otherwise, or is contrary to justice and good morals, or is calculated to injure the state or its citizens it will not be enforced. Massachusetts courts in some of the earlier cases went pretty far in refusing to enforce foreign laws on the grounds of public policy.[26] A New York court in one instance threw around the citizens of New York a protection equal to that usually accorded infants and lunatics in refusing to enforce against them their liability as stockholders in a foreign corporation, the court gave as his reason—that many New York citizens had of late invested in stock in hazardous corporations in the west and that owing to gross mismanagement and dishonesty of promoters that the citizens of New York would be subject to great burdens if the courts allowed recovery against them.[27]

Federal courts sitting in a state, where there is an express statute declaring the public policy of such state, are not at liberty to disregard such statute.

IX. Same—"Full Faith and Credit."—Where liability has been reduced to a judgment in foreign state, the domestic court cannot refuse to enforce such judgment on the grounds that the statute upon which the judgment was recovered offends the public policy of the forum. Domestic court must enforce a foreign judgment unless there was fraud in the procurement, or want of jurisdiction in court rendering it or unless it was recovered upon a penal statute.

X. Foreign Statute Prescribes Remedy.—If any remedy can be had against resident stockholders in foreign corporations, it is well established that the procedure in

(25) 31 Am. St. 547.
(26) 154 Mass. 203.
(27) 148 N. Y. 9.

such cases is acording to the law of the forum. If the foreign statute creating the liability does not prescribe a remedy, it will, unless other questions arise, be enforced if the procedure of the forum is adaptable to such cause. The converse. If the state creating the liability provides a remedy it is generally held that such remedy is exclusive and the liability will not be enforced extra-territorially.[28]

XI. Same. Kansas and Michigan Constitutions.—Many of the states have refused to enforce against their citizens, stockholders in Kansas corporations, liabilities arising under the constitution of Kansas, on the ground that the framers of the Constitution of Kansas did not intend the liability to be self-executing, but meant it to be enforced by a special remedy to be provided by the statutes of Kansas. Thus the prescribed remedy was held to be exclusive and the liability not enforceable extra-territorially.[29] Same question came up and was decided in like manner in case of Michigan Constitution.[30]

XII. Foreign Statute Requires Suit in Equity.—Where the liability imposed by foreign statute requires a suit in equity a number of the states have refused to enforce it on the grounds that it required a suit in the state of the corporate domicile, and that complete justice could only be done by the courts of that state.[31]

XIII. Conditions Precedent.—A creditor of a foreign corporation will not be allowed to maintain an action against a resident shareholder, on his statutory liability, until all the material provisions of the foreign statute imposing the liability have been carried out, whether they relate to the liability of the defendant, the person who is to sue, the time within which the suit is to be brought, or any other conditions pointed out by the statute.[32] Such statutes usually provide that the creditor shall have first recovered judgment against the corporation, with execution returned "nulla bona,"[33] or show that it would be useless to obtain judgment.[34]

If a special statute of limitations is contained in the same statute which creates the liability, it is regarded as a condition and not as an incident pertaining to the remedy and will determine the time within which an action on the liability must be brought, even in a foreign jurisdiction; to be distinguished from general statute of limitations.[35]

XIV. Four Methods of Enforcing Statutory Liability.—Classified according to the method required for enforcing, there are four kinds of statutory liabilities imposed by the different states upon stockholders, the discussion of which will show the application of some of the above principles. Liabilities which are enforced by the first, second or fourth method hereafter explained are, in the absence of other complications, usually enforced extra-territorially.

XV.—"Unconditional" Method.—If statute creating liability does not require the creditor to exhaust his remedies against the corporation, the individual liability of the stockholders is usually regarded as primary and they may be sued immediately, when the debt becomes due. Such liabilities are generally enforced by foreign states.[36]

XVI. "Single Action" Method.—Liabilities enforced by this method are those created by statutes which require as a condition precedent, that the creditor exhaust his remedies against the corporation, but which, after this is done, allow any creditor to sue any stockholder. Such liabilities have in most cases been enforced extra-territorially.[37] But a few of the states have refused to enforce such foreign statutes, on grounds of public policy, claiming that it would work injustice upon their citizens to allow a creditor to select any stockholder and thereby place a greater bur-

(28) 25 W. Va. 184, 46 N. Y. 119.
(29) 148 N. Y. 9, 64 N. H. 540.
(30) 77 Wis. 101.
(31) 144 Mass. 341, 25 W. Va. 184.
(32) 109 U. S. 371.
(33) 112 Ill. 196.
(34) 33 Conn. 516.
(35) Sec. XXII.
(36) 3 Am. St. R. 850-852.
(37) 196 U. S. 559.

den upon one than he ought according to justice bear.[38]

XVII. "Bill of Peace" Method.—Some statutes creating additional liability of stockholders require first, that the creditor shall exhaust his remedies against the corporation, second that a suit shall be brought in equity on behalf of all the creditors, in which the corporation itself and all the stockholders within the jurisdiction must be made parties. The rights and liabilities of all who are present are determined in this suit. It has been held that no separate action, whether in law or equity, can be maintained in a state other than that of the domicile of the corporation, against any of its stockholders to charge them with such individual liability.[39] The grounds usually given for not enforcing such a foreign law are that the statute prescribed a remedy, which remedy is exclusive,[40] or that it requires a suit in equity,[41] the corporation being an indispensable party[42] and that to enforce such a liability against one or more stockholders in a state other than the corporate domicile would be unjust.[43] (198 Pa. St. 513, 148 N. Y. 9).

XVIII. "Assessment" Method. — By this, as in the latter two methods, it is provided as a condition precedent that remedies against the corporation have been exhausted and it is also a condition precedent to the bringing of an action against the stockholder on his individual liability, that an action has been brought against the corporation to have receiver appointed and to have the excess of corporate liabilities over assets established. Then the creditor must bring a separate action against the stockholder and it is a matter of simple computation to determine the amount for which the stockholder is liable. He would be liable for that proportion of the total unpaid indebtedness, as the number of shares he owns bears to the total number of shares issued. Liabilities created by statutes which require this method of enforcement are enforced in practically all the states[44] unless some other question arises.

XIX. Same—Decree in State of Corporate Domicile Conclusive.—The decree of the court making the assessment and determining the relations of the corporation, stockholders and creditors is binding upon foreign stockholders as they are represented by the corporation. Thus in a suit by a creditor against a foreign stockholder such a judgment is conclusive evidence of the total amount of indebtedness of corporation and can only be impeached for fraud or want of jurisdiction.[45]

XX. Ancillary Suits.—A bill in equity may be maintained in a state other than that by which the corporation was created, against officers of the company, resident in such state, for discovery of the names of stockholders and number of shares held by each, for purpose of enforcing statutory ate domicile or elsewhere, even though the liability was such as would not have been enforced in such state where bill of discovery is maintained.[46]

XXI. Migrating Companies. — New York has gone so far as to allow resident shareholders of a Connecticut corporation, which had moved into New York, privileges which they would have enjoyed in the state of Connecticut.[47]

XXII. Statutes Prohibiting Enforcement.—New Jersey passed a statute which provided that no proceeding should be had in the courts of New Jersey, whereby to enforce against a stockholder of a corporation any personal liability arising from the laws of any other state or country. But later it was held that, as to all contracts which a creditor had made with the foreign corporation, prior to the passage of this act that the act was void, as it violates the New Jersey Constitution, which provides that, "the legislature shall not pass any law impairing the obligations of contracts, or

(38) 25 W. Va. 184, 106 Wis. 256.
(39) 15 Gray, 221, 25 W. Va. 124.
(40) 20 Wall. 520.
(41) 144 Mass. 341.
(42) 112 Ill. 196.
(43) 198 Pa. St. 513, 148 N. Y. 9.
(44) 175 Mass. 570.
(45) 89 Fed. 641.
(46) 144 Mass. 341.
(47) 34 N. Y. 208.

depriving a party any remedy for enforcing a contract, which existed when the contract was made."[48]

XXIII. State Enforcing Liability Provides Remedy.—It is well established that all matters touching the remedy and the mode of procedure, whatever the nature of the action may be, are to be governed by the lex fori, regardless of the domicile of the parties or where the cause of action accrues.[49] Thus statute of limitations of forum applies for determining whether the action is barred.[50]

XXIV. Same—Attachment. — Applying the principle that the remedy and procedure is according to the law of the forum, it has been held that the attachment of the private property of stockholders of a foreign corporation before judgment was held unwarranted because the court found no authority for such in the statutes of the forum.[51]

XXV. State Creating Liability Determines Nature and Extent.—The nature of the liability, and the time when,[52] and the conditions upon which[53] the cause of action accrues against the stockholder and the persons to enforce it[54] are all determined by the laws of the foreign state which created the corporation and imposed which created the corporation and imposed the liabilities, as interpreted by the courts of last resort in that state.[55]

XXVI. Foreign Receivers.—A receiver who is clothed with merely an equitable interest being nothing more than an arm of the chancery court, has no authority outside of the territorial jurisdiction of such court.[56] But some of the states, as a matter of comity, allow a foreign receiver to bring suit against a resident to enforce his liability as a stockholder in a foreign insolvent corporation, when under the laws of the corporate domicile it is established that the receiver is the proper person to enforce the liability.[57]

XXVII. Dismissal.—When a court refuses to endorse a foreign law, on the ground that it is not entitled to extra-territorial enforcement, the action will be dismissed for want of jurisdiction, thereby not barring a subsequent action in the proper state.[58]

S. THORNE ABLE.

St. Louis, Mo.

(48) 96 Fed. 70.
(49) 106 U. S. 124.
(50) 193 U. S. 602.
(51) 18 Me. 35.
(52) 135 U. S. 533.
(53) 197 U. S. 394.
(54) 189 U. S. 335.
(55) 59 Pa. St. 227, 113 U. S. 452.
(56) 16 Pet. U. S. 25.
(57) 159 N. Y. 265, 90 Ala. 207.
(58) 6 Vt. 102, 28 Am. L. Review, 521.

BILLS AND NOTES—ALTERATION.

WILSON v. WEIS et al.

123 S. W. 841.

Court of Civil Appeals of Texas, December 7, 1910.

Before an accommodation indorser signed a promissory note, it was made payable to "myself," referring to the principal. After his indorsement, another person's name was inserted, without his knowledge or consent, after the word "myself," thereby changing the payee of the note. Held, that, though the change was not prejudicial to the accommodation indorser, yet it was a change in the terms of the note, and hence relieved him of liability.

JAMES, C. J.: This proceeding was begun in the justice's court by S. Messinger against C. Weis as principal and H. T. D. Wilson as indorser on a note for $150. Mrs. G. Cohen intervened, claiming to be the owner of the note.

The note which is attached to the statement of facts is as follows:

"No.—. Houston, Texas, May 30, 1908. Due——.

"Thirty days after date, for value received, we and each of us, jointly and severally, promise to pay to the order of

Myself—Mrs. G. Cohen

UNION BANK AND TRUST COMPANY $150.00 the sum of One Hundred and fifty No/100 Dollars together with interest thereon at the rate of eight per cent per annum from maturity until paid; principal and interest of this note payable at the office of Union Bank and Trust Company, at Houston, in Harris County, Texas.

"If this note is not paid at maturity and is placed in the hands of an attorney for collec-

tion we agree to pay ten per cent additional upon the principal and interest hereof as attorney's fees for collection.

"Each maker, surety and endorser hereon, especially waives grace, protest, notice and presentation for payment.

"Address: ——." C. Weis.

The note bears indorsements as follows:

"C. Weis. H. T. D. Wilson.—Extended 90 days.—Extended 60 days."

The judgment in the justice's court was against appellant for the amount of the note in favor of Mrs. Cohen. The case came to the county court on appeal, when Wilson filed his written pleading, claiming that the extensions evidenced by the indorsements operated to discharge him as indorser. He also pleaded, under oath, that the instrument sued on was not the note he signed, nor was same executed by him or by any person authorized to execute it for him, but that it contains an alteration making it another and different contract from that which he intended to obligate himself, which alteration consisted in adding and interlining the name of Mrs. G. Cohen, after the execution and delivery of said note to the intervener, and that it was without his knowledge or consent and constituted a new contract, which is not in any way binding on this defendant. In the county court judgment again went against Wilson, who appeals.

The first assignment of error is that the court erred in admitting the note in evidence over appellant's objection, because the same bore an alteration apparent upon its face, and was inadmissible until said alteration was explained.

The second assignment is that the court erred in not withdrawing the note from evidence, when intervener failed to show that the alteration was made with defendant's knowledge or consent, or in some way by his authority.

The third is that the court having found that the note sued on had been altered by the insertion of the name of "Mrs. G. Cohen" as the payee erred in not rendering judgment for appellant.

The fourth is that the court erred in not rendering judgment for Wilson when it found as a fact that there were two extensions of the note, and did not find that said extensions were made by Wilson's authority, or with his knowledge and consent.

The fifth is that the court erred in excluding the testimony of Wilson going to show that the words in small type "Union Bank & Trust Company" in the note sued on had been scratched out subsequent to his indorsement thereon. The bill of exceptions shows the court overruled the objection to the admission of the note, with the statement that it would be allowed to go in subject to subsequent explanation.

The court resolved the facts by the following conclusions:

"Findings of Facts.

"The court finds: That on or about the 30th day of May, 1908, C. Weis approached S. Messinger, the son-in-law of Mrs. G. Cohen, for the loan of $150. That the said Messinger told the said Weis that he could get the money for him from his mother-in-law, Mrs. G. Cohen, provided he could secure a good indorser. That thereafter Weis approached Harvey T. D. Wilson, and induced him to sign the note as an accommodation indorser. That said note was a printed note such as is used by the Union Bank & Trust Company. That, when the note was presented to H. T. D. Wilson for his indorsement, the words 'Union Bank & Trust Company' had been stricken out, and the word 'myself' inserted, and that the words 'Union Bank & Trust Company' in small letters in the body of the note designating the place at which the note was payable were stricken out. That when Mr. Wilson indorsed the note the words 'Mrs. G. Cohen' were not on the note. That subsequently Weis presented the note to Messinger, and that it then had all of the alterations upon it which now appear in the note, including the words 'Mrs. G. Cohen.' That Messinger thereupon gave him the $150 and accepted the note. That G. Weis is now a nonresident of the state of Texas, and no service has been had upon him. That on the back of said note appears two extensions one for 90 days and one for 60 days. That in the body of the note appears a printed waiver of grace, protest notice, and presentation for payment. That Mrs. G. Cohen is the legal owner and holder of said note."

The material conclusion of law was: "The court concludes that the insertion of the words 'Mrs. G. Cohen' was not such a change in the note as would release indorsers or sureties."

There was no expressed conclusion of law as to the matter of the extensions, nor as to the striking out of the words "Union Bank & Trust Co." in the designation of the place at which the note was payable. The court having found as a fact that, after Wilson had indorsed the paper the note which then read payable to "myself" was changed to read "myself—Mrs. G. Cohen," the question of the liability of Wilson is presented, without the necessity of our discussing the question raised by the first and second assignments. The vital question is that contained in the conclusion of law above copied. We think the court has erred in the conclusion.

The circumstances are these: The instrument when presented to Wilson for his accommodation indorsement, and when he indorsed it, was a note payable to the order of "myself," which meant "Weis." Wilson intended thereby to obligate himself to any one to whom Weis by indorsement transferred it. After Wilson placed his name upon it, Weis added after the word "myself" the name of Mrs. G. Cohen, the person to whom he negotiated it. His name appears indorsed on the note.

It is claimed by appellee, as held by the trial judge, that the change was not a material one, because it did not prejudice any right of the indorser, and we confess it is impossible to see how his liability and his legal right were any different than they would nave been had the alteration not been made, and had Weis simply indorsed the instrument in its original form and delivered it to Mrs. Cohen. That in the sense that Wilson was not affected injuriously by the alteration it was not a material change may be conceived, but that is not the test, as the change may be beneficial to the party complaining, and yet avoid the paper. Ryan v. Morton, 65 Tex. 258; Adams v. Faircloth, 97 S. w. 507. The rule is in furtherance of a principle of public policy to discourage tampering with written contracts. It applies to any change of the terms of the instrument as the same existed when entered into by the party. An alteration that works no change, but which leaves the terms of the contract the same as before, does not vitiate it. But here Wilson indorsed a note which was payable to the order of one person, and the change made it payable to the order of another person. The note was not the same in its provisions as it was before the alteration. Such a change has of itself frequently been held to vitiate instruments. Bell v. Mahin, 69 Iowa, 408, 29 N. W. 331; Horn v. Newton, 32 Kan. 518, 4 Pac. 1025; Erickson v. Bank, 44 Neb. 622, 62 N. W. 1078, 28 L. R. A. 577, 48 Am. St. Rep. 753. The only case decided in this state, so far as we have learned, which bears on the question, is Skelton v. Tillman (Sup.) 20 S. W. 71. There a note payable to E. M. Tillman was changed so as to make the payee E. M. Tillman & Bro. by interlining the words "& Bro." The Supreme Court adopted the opinion of the commissioners in the last-named case, and the reasoning of the opinion leaves no room for doubt that an alteration of this kind is a material one in the sense of the rule.

This being so, the necessary result is that recovery cannot be had on it against the indorser. Wherefore the judgment is reversed, and judgment here rendered in favor of appellant.

Reversed and rendered.

NOTE.—*Effect of Changing the Payee of a Note Without the Maker's Consent.*—The above opinion can hardly be reconciled with the recent tendency of decisions in like cases. If the court feels compelled to "confess it is impossible to see how the defendant's liability and his legal rights were any different than they would have been had the alteration not been made," the rule of decision now obtaining would hold the alteration immaterial and of no effect. Indeed it has always been stated by courts and text writers that no alteration will vitiate an instrument unless it changes the legal effect thereof. Recent decisions have been more pronounced in their application of this doctrine.

In James v. Tilton, 183 Mass. 275 (1903), 67 N. W. 326, it appeared that a note drawn to the order of two members of a partnership was subsequently turned over to the third member as his share of the assets of the firm on the winding up thereof, and was altered by him by striking out the names of his two partners and inserting his own name as payee. Proper indorsements to his order were made by the two partners on the back of the note. After suit brought, the note was again changed by erasing the name of the third partner and restoring the names of the original payees. All these alterations were held immaterial, the court saying: "The note as altered taken in connection with the indorsements by Evans and Watson expressed no more than the actual legal liability of the defendant at the time of the alteration. The most that can be said is that Evans and Watson were originally named as payees and that by the alteration the plaintiff became payee, and therefore the effect of the instrument as originally drawn was changed. But the judge has found that the alteration was not fraudulent, and that the plaintiff was in law and in fact a payee of the note. ... The insertion of his own name *simpliciter* would not have constituted a material alteration since it did not change in any respect what was already the legal effect of the note. Aldous v. Cornwell, L. R. 3 Q. B. 573."

The true rule is well stated in Ryan v. First National Bank of Springfield, 148 Ill. 349, 35 N. E. 1120, (1894). A promissory note had been made payable to the bank, and upon the latter requiring a third person as guarantor, the note was signed by one O'Donnell just below the signature of the makers. Subsequently O'Donnell came to the bank and had his name erased from the foot of the note and written in the body thereof as payee, at the same time assigning the note back to the bank with a guaranty of payment. In the course of the opinion the court said: "It seems to be well settled that while the general rule is that the unauthorized alteration of a contract by a party to it renders it void, the rule has been so far relaxed, at least in this country, that such an alteration, even though made by a party to the contract, will not destroy its validity unless the alteration is found to be material (2 Parsons on Contracts, 720).... This court said in Vogle v. Ripper, 34 Ill. 106: "The effect of an alteration in a written instrument depends upon its nature, the person by whom and the intention with which it was made. If neither the rights or interests, duties or obligations, of either of the parties are in any manner changed, an alteration may be considered as immaterial." Applying these principles to the case at bar, the alteration

was held immaterial as it had "no other effect than to carry out the intention of the parties when they signed the note," and for the further reason that the legal effect of the obligation as between the bank and the makers was not essentially changed, but the rights and duties of the parties were precisely the same after as before the change.

A similar rule, it is to be expected, would be applied in Kentucky. In Tranter v. Hibbard, 108 Ky. 265, 56 S. W. 169, (1900), the court said: "In this State in some of the earlier cases —as in Johnson v. Bank, 2 B. Mon. 311.—it was held that any alteration in a deed or note, whether material or immaterial, would vitiate the instrument. But this doctrine has not been adhered to in the later cases. In Lisle v. Rogers, 18 B. Mon. 528, in an opinion by Judge Simpson the court concedes 'the correct doctrine to be that an alteration, to avoid such instrument must be material and such seems to be the tendency of modern decisions on the subject.'" Accordingly the court held an alteration which inserted the word "fixed" after the date of payment to be immaterial, since under the peculiar laws of Kentucky the note was held non-negotiable and therefore even without the word "fixed" not entitled to days of grace.

In Erickson v. First National Bank of Oakland, 44 Neb. 622, 28 L. R. A. 577, 62 N. W. 1078, (1895), cited in the opinion of the Texas court supra, the law is declared to be as follows: "It is conceded, and there is no doubt of it, that the fraudulent erasure of the name of the original payee of a promissory note, after its execution, by a party to the instrument, and the substitution of another without the consent of the maker, is a material alteration. The doctrine is elementary." But in this case it appeared that the accommodation endorser signed the paper on the representation that the note was to be delivered to the payee therein named. This payee, however, never received the note. Instead the maker, after changing the payee of the note, negotiated the paper for other purposes than those represented to the accommodation endorser. Had the alteration been made by the original payee of the note and the paper negotiated by him, it is reasonable to believe that a different result would have been reached by the court.

Missouri, it appears, holds a unique position in this question. The doctrine of this State is summed up by the St. Louis Court of Appeals, per Judge Nortoni, in McCormack Harvesting Mach. Co. v. Blair 146 Mo. App. 374, 124 S. W. 49, (1910) as follows: "The doctrine in Missouri seems to be different from that which obtains generally throughout other jurisdictions. There was at one time a considerable conflict in this jurisdiction on the question of the effect of immaterial alterations. But this no longer obtains. The courts have in a number of cases expressed their approval of the rule that even an immaterial alteration of a writing made therein without authority by the person claiming thereunder avoids the instrument." The Procrustean methods of reform moving the Missouri courts to take this stand may be gathered from the words of Judge Sherwood in Kelly v. Thuey, 45 S. W. 300, 143 Mo. 422, loc. cit. 434: "By thus holding we intend to make the payees or obligees of money-bearing or title-bearing obligations *honest*, whether that disposition accords with their *natural inclinations* or not."

The sum of the decisions points to the conclusion that the question in each case is, have the contractual rights and duties of the parties been changed by the alteration? If they have, the alteration is material; otherwise it is immaterial. The question is not properly one of public policy, but comes strictly within the domain of the law of contracts. A. E. G.

CORAM NON JUDICE.

REFORM OF JUDICIAL PROCEDURE.

A correspondent in Oregon calls our attention to an amendment of Oregon Constitution which was adopted at the general election of 1910, by a vote of 44,958 yeas against 39,399 nays.

The particular section of that amendment which concerns us reads as follows:

"Section 3. In actions at law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of this state, unless the court can affirmatively say there is no evidence to support the verdict. Until otherwise provided by law, upon appeal of any case to the Supreme Court, either party may have attached to the bill of exceptions the whole testimony, the instructions of the court to the jury, and any other matter material to the decision of the appeal. If the Supreme Court shall be of opinion, after consideration of all the matters thus submitted, that the judgment of the court appealed from was such as should have been rendered in the case, such judgment shall be affirmed, notwithstanding any error committed during the trial; or if, in any respect, the judgment appealed from should be changed, and the Supreme Court shall be of opinion that it can determine what judgment should have been entered in the court below, it shall direct such judgment to be entered in the same manner and with like effect as decrees are now entered in equity cases on appeal to the Supreme Court. Provided, that nothing in this section shall be construed to authorize the Supreme Court to find the defendant in a criminal case guilty of an offense for which a greater penalty is provided than that of which the accused was convicted in the lower court."

The power and the duty devolved upon the Supreme Court to dispose finally of causes on appeal is stated very explicitly. It lies in the hands of either party desiring to put an end to a case taken on appeal to secure the exercise of that power. In granting this privilege it is seen that the Constitution of Oregon recognizes very clearly, that as a record can show in absolute perfection everything that occurred in the trial court, there is no necessity of clinging with unreasoning tenacity to the old doctrine of the trial court's superior ability to dispose of questions of fact. Recession from this doctrine we have been persistently urging.—Editor.

CORRESPONDENCE.

"FLEXIBILITY OF THE LAW."

Editor Central Law Journal:

Your leading editorial of March 10th, besides being a complete refutation of the ill-conceived thought in the "Outlook" editorial, is an able presentation of the theory of the law and the basis of it and reflects the strong reasoning and profound principles that have made the opinions of Mr. Chief Justice Marshall the cornerstone of constitutional interpretation. Although the strength of the Constitution depends upon its interpretation and, to that extent, upon the ability and fitness of the Courts, it does not follow, in a trained legal mind, that such decisions are personal opinions, but are interpretations in the truest sense of the word. As I understand it, an existing, but dormant, power is galvanized into a carefully directed activity under the guiding hand of the Court. I had read the article, now very justly subjected to your criticism, and deplored the misguiding effect it might have upon the popular mind in causing it to look less to and respect less the fundamental principles of the Constitution and bases of our laws, by causing attention to be fixed upon the personnel of the highest appellate Court. It looks as if we had fallen upon a time when the reincarnation of the spirit of 1776 would be useful—that we may not in spirit, if in form, forget the three distinct divisions of the Federal Government. There may be laid at the door of the late administration much of the present confusion, that Courts are expected to brush aside the most sacred principles, that a policy might be enforced. We have the right to expect much from the great Executive now directing most judiciously the course of the government. It is such editorials as yours upon which he must depend. The danger to the country lies in the aptness of the average mind to accept any popular statement coming from an influential source and supported by an apparent example, without reaching an individual conclusion, the result of thoughtful reasoning. I am profoundly impressed with the importance of a popular distribution of the Federalist, that the lay mind may become more intimately in touch wth the formative period of the Government.

THOMAS W. SHELTON.

Norfolk, Va.

BOOK REVIEWS.

AMERICAN AND ENGLISH ENCYCLOPAEDIA OF LAW AND PRACTICE. VOL. 5.

The Edward Thompson Company has advanced along the line of its new series under the above title to volume 5. The five volumes extant carry us down to "Assignments for the Benefit of Creditors." Very probably the first letter of the alphabet is the most comprehensive for legal subjects and certainly volume 5 shows many important subjects under this initial.

Thus the volume begins with "Arbitration and Award," which covers 273 pages. "Architects" follows on closely, then "Arguments of Counsel,' "Arraignment and Plea," "Arrest," "Arrest of Judgment," "Arson," "Articles," "Assault and Battery," "Assignments," and "Assignments for the Benefit of Creditors."

These are the articles and the remainder of the 1400 pages of the volume is taken up with cross-references and maxims and words and phrases. The latter always are explained, both in text and note. They are some seventy-five in number. Take as an illustration of how they are treated, the word "As" and we discover that the cross-references and notes with authorities cover six pages with something like fifty cases from opinions in which excerpts are taken.

The articles in this volume are all elaborate and important.

The series is bound in law buckram, of the usual encyclopaedia size and as it progresses shows itself more and more a sufficient justification for its appearance.

Published by Edward Thompson Company, Northport, Long Island, N. Y. 1910.

COLLIER ON BANKRUPTCY, 8th ED.

The eighth edition of this standard work is an especially important edition to an indispensable work. Since the seventh edition issued in the early part of 1909, nearly two years have elapsed. In the meantime the bankruptcy statute has not only been amended in a very important degree, but many decisions on the original act passed in 1898 and amendments thereof in 1903 and 1906 have appeared. The amendment by the Act of June 25th, 1910, became necessary not only because improvement in the structure of the law was needed, but also because variant decision was militating against the uniformity, which the constitution contemplated in vesting Congress with any authority over the subject.

For proper construction of the 1910 amendment it is required that a comprehensive glance at the old law and interpretation thereof be at the elbow of practitioners and judges.

This eighth edition containing the original act and all amendments with decisons to date, not only as found in the American Bankruptcy Reports, but also other cases of even date is by Mr. Frank B. Gilbert of the Albany Bar, who is also editor of Street Railway Reports, annotated.

The book is excellent in its typography and general make up. The binding is of law buckram.

Publishers are Matthew Bender & Co, Law Publishers, Albany, N. Y. 1910.

HUMOR OF THE LAW.

James M. Beck, the famous corporation lawyer of New York, is a native of Philadelphia, and to Philadelphia he often returns to see his old friends.

Mr. Beck, at a recent banquet in Philadelphia, defended corporations with an epigram.

"The trust buster and the Socialist may do what they please," he said, "but mankind will still be divided into two great classes—those who walk to get an appetite for their dinner and those who walk to get a dinner for their appetite."

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

1. **Accord and Satisfaction** — What Constitutes.—Where a claim is unliquidated or in dispute, a payment and acceptance of a less sum than that claimed in satisfaction operates as an accord and satisfaction.—Castelli v. Jereissati, N. J., 78 Atl. 227.

2.——What Constitutes.—A check for the amount presently due on a contract, with request that it be accepted in full settlement and termination of the contract, held not an accord and satisfaction.—A. G. Rhodes & Son Co. v. Outcault Advertising Co., Ga., 69 S. E. 705.

3. **Acknowledgment**—Certificate of Notary. — Recitals of an officer's certificate of acknowledgment, regular on its face, are conclusive of the facts stated therein, in the absence of fraud or duress.—Bell v. Castleberry, Ark., 132 S. W. 649.

4. **Action**—Joinder.—At common law a cause of action accruing to one individually cannot be joined with one accruing to him in a representative capacity.—Pensacola Electric Co. v. Soderlind, Fla., 53 So. 722.

5. **Adverse Possession**—Sufficiency of Possession.—Actual possession of land under a claim of ownership without any paper title is sufficient to give title as against one having no right or title in himself.—Wolfe v. Langford, Cal., 112 Pac. 203.

6. **Appearance**—Default Judgment.—By objecting to a default judgment as unsupported by the complaint, defendants made a general appearance.—Maclay Co. v. Meads, Cal., 112 Pac. 195.

7. **Bail**—Liability of Surety.—The liability of a surety on a bail bond in a criminal case does not depend upon a previous demand by the state upon the defaulting party and default of payment by him.—McCormick v. Boylan, Conn., 78 Atl. 335.

8. **Bailment**—Storage of Lumber.—A lumber company, having received from the buyer of lumber the surplus of an overshipment by the buyer, and its act in receiving the lumber having been ratified by the seller, held to owe to the buyer the duty to take ordinary care of the lumber.—Bullock Lumber Co. v. Marbury Lumber Co., Ky., 132 S. W. 550.

9. **Bankruptcy**—Priority of Mortgage. — A mortgage executed by a bankrupt more than four months prior to bankruptcy is entitled to priority in bankruptcy proceedings.—Bean v. Orr. (C. C. A.) 182 Fed. 599.

10.——Reopening Estates.—In a petition to reopen a bankrupt's estate on the ground that there are assets which were not administered, it is not necessary to show what property was surrendered by the bankrupt, or what representations were made in his schedules, nor that any creditor was deceived by such representations.—Traub v. Marshall Field & Co. (C. C. A.) 182 Fed. 622.

11.——Title of Assignee.—An assignee in bankruptcy appointed by the federal court in Louisiana at the time Texas was a foreign state held not to acquire title to real estate situated in Texas.—Chalson v. McFaddin, Tex., 132 S. W. 524.

12. **Banks and Banking**—Deposits.—A bank receiving a deposit credited to the depositor, followed by the word "agent," held not authorized to apply the fund to its own benefit under his authority when it belongs to others. —Silsbee State Bank v. French Market Grocery Co., Tex., 132 S. W. 465.

13. **Brokers**—Commissions.—A broker employed to procure a lessee held not entitled to a commission on a sale of the property arranged solely between the lessee found and the owner.—Evertson v. Warrach, Tex., 132 S. W. 514.

14. **Burglary**—What Constitutes.—To constitute the crime of burglary at night, an actual breaking is not required, but only an entry by force, such as opening a closed door, whether latched or not.—Jones v. State, Tex., 132 S. W. 476.

15. **Cancellation of Instruments** — Equity Jurisdiction.—Where a municipality has a right to treat a contract with a waterworks company as terminated by the latter's breach of its obligation to furnish an adequate supply of water, it may invoke the aid of equity to enforce its rescission of the contract.—City of Columbus v. Mercantile Trust & Deposit Co. of Baltimore, 31 Sup. Ct. 105.

16. **Carriers**—Delay in Shipment.—Even if a carrier could take its freight crews to handle an extraordinary passenger traffic, it was bound to notify shippers, upon receiving freight for transportation, of the crippled condition of its freight traffic by reason of the diversion of freight engines in order to excuse delay in transportation from such cause.—Daoust & Welch v. Chicago, R. I. & P. Ry. Co., Iowa, 128 N. W. 1106.

17.——Freight Shipments. — Where coal is shipped by rail in bulk, the weights stated in the bill of lading are prima facie evidence of the amount received, against the initial or connecting carrier.—Brown v. Missouri, K. & T. Ry. Co., Kan., 112 Pac. 147.

18. **Citizens**—Children of Indians.—One born of an Indian mother and a white father was a citizen of the United States, taking his civil status from the father.—State v. Nicolls, Wash., 112 Pac. 269.

19. **Common Law**—Operation.—If a rule of common law is unfitted to the changed conditions existing in this state, so that its application will work hardship, the Supreme Court will not follow it.—San Joaquin & Kings River Canal & Irrigation Co. v. Fresno Flume & Irrigation Co., Cal., 112 Pac. 182.

20. **Constitutional Law**—Fellow Servant Rule. —The abrogation of the fellow servant rule as to railroad employes, made by Ann. Code, Miss. 1892, sec. 3559, held not a violation of the equal protection of the laws clause of the federal Constitution.—Mobile, J. & K. C. R. Co. v. Turnipseed, 31 Sup. Ct. 136.

21.——Police Power.—The validity of a legislative police regulation depends upon whether the ends sought to be attained are appropriate, and the means to such ends are also appropriate.—State v. Phelps, Wis., 128 N. W. 1041.

22.——Statutes.—The directors of a corporation do not represent the bondholders so as to urge the invalidity as to them of the statute repealing the corporate charter.—Calder v. People of the State of Michigan, 31 Sup. Ct. 122.

23.——Vested Rights.—One who has merely filed an application to purchase state land held to have no such vested right as will prevent a repeal of the law providing for a sale of the land.—Polk v. Sleper, Cal., 112 Pac. 179.

24. **Contracts**—Action for Breach.—A railroad company is not justified in refusing to observe a contract with another company for a division of rates on through shipments, apparently valid, because of an opinion of the Interstate Commerce Commission delivered in a proceeding to which neither of the companies was a party.—Malvern & F. V. R. Co. v. Chicago, R. I. & P. Ry. Co. (C. C.) 182 Fed. 685.

25.——Breach.—Where one party to a contract seeks to avoid compliance therewith, the other party may, without waiving his rights, make an honest effort to induce compliance.—Louisville Packing Co. v. Crain, Ky., 132 S. W. 575.

26.——Consideration.—An agreement to forbear action for an existing debt is a sufficient consideration for an undertaking by a third person to pay the debt.—United & Globe Rubber Mfg. Cos. v. Conard, N. J., 78 Atl. 203.

27.——Construction.—When an agreement is reduced to writing, the whole understanding of the parties, in the absence of fraud, is embraced within its terms.—Moline Jewelry Co. v. Otwell, Lowe & Tull, Del., 78 Atl. 300.

28. **Corporations**—Capital Stock.—The lien given a corporation upon its stock may be foreclosed in equity.—United States & Canada Land Co. v. Sullivan, Minn., 128 N. W. 1112.

29.——Corporate Name—For one corporation to appropriate and use the distinctive portion of another corporation's name is, in effect, an unlawful appropriation of the name.—Daughters of Isabella No. 1 v. National Order of Daughters of Isabella, Conn., 78 Atl. 333.

30.——Informal Acts of Officers.—Where corporation officers and trustees have habitually followed the practice of giving their individual approval to their officers' acts, without formal action by the board, the corporation will be held liable for an act so authorized.—National Bank of Commerce of Seattle v. Puget Sound Biscuit Co., Wash., 112 Pac. 265.

31.——Officers.—The organizers of a corporation cannot select its officers, such being the duty of the board of directors.—Rideout v. National Homestead Ass'n., Cal., 112 Pac. 192.

32.——Preferred Stock.—A preferred stockholder of a corporation is not a creditor of the corporation, and must be confined to his rights as a stockholder.—Weaver Power Co. v. Elk Mountain Mill Co., N. C., 69 S. E. 747.

33.——Powers of President.—The president of a corporation, as such, has not power to bind the company by a contract; but such authority may be conferred generally, or specially in the individual case.—Potts-Thompson Liquor Co. v. Potts, Ga., 69 S. E. 734.

34.——Wrongful Issuance of Stock.—A holder of a small amount of stock in a corporation held entitled to sue the corporation to enjoin it from issuing preferred stock for sale at less than par.—Carrver v. Southern Iron & Steel Co., N. J., 78 Atl. 240.

35. **Criminal Evidence**—Conduct of Accused.—The flight of accused held a circumstance from which in connection with other circumstances the jury may draw an inference of conscious guilt, unless the flight is explained.—State v. Mallonee, N. C., 69 S. E. 786.

36. **Criminal Law**—Bill of Particulars.—Assuming that a bill of particulars in a criminal case is permissible, the granting thereof is within the discretion of the trial court which will not be disturbed in the absence of a manfest abuse.—State v. Empting, N. D., 128 N. W. 1119.

37.——Defenses.—It is presumed that accused was sane when the crime was committed, and to overcome or cast a reasonable doubt upon the correctness of such presumption he must introduce evidence showing insanity.—Pribble v. People, Colo., 112 Pac. 220.

38.——Evidence.—In a prosecution for forgery, evidence of a prior transaction indicating an embezzlement by defendant, rather than forgery, held inadmissible to show intent.—Pelton v. State, Tex., 132 S. W. 480.

39.——Instruction.—An instruction was proper, in a prosecution of a labor union official for embezzlement, that it was not necessary that criminal intent be proved by direct evidence.—State v. Martin, Mo., 132 S. W. 595.

40.——Intoxication as a Defense.—Intoxication from the voluntary use of drugs held in law the same as intoxication from use of liquor.—Commonweath v. Detweiler, Pa., 78 Atl. 271.

41.——Limitations.—A conspiracy to restrain trade in violation of the Sherman act held to continue so far as the statute of limitations is concerned as long as any further action is taken in furtherance of the conspiracy.—United States v. Kissel, 31 Sup. Ct. 124.

42. **Criminal Trial**—Record.—In a prosecution for felony, the record proper should clearly show that defendant was arraigned and pleaded, and was personally present at every stage of the trial.—Blocker v. State, Fla., 53 So. 715.

43. **Criminal Law**—Remarks of District Attorney.—To justify setting aside a verdict on the ground of improper remarks of district attorney, the Supreme Court must be convinced that the jury was influenced by such remarks and that they contributed to the verdict found.—State v. Johnson, La., 53 So. 702.

44. **Damages**—Mental Anguish.—It is the settled rule of the federal courts that mental anguish alone, not arising from some physical injury or pecuniary loss caused by the negligent or other wrongful act of another, is not a basis for an action for damages in the absence of a statute authorizing such a recovery.—Kyle v. Chicago, R. I. & P. Ry. Co. (C. C. A.) 182 Fed. 613.

45.——Personal Injuries.—One suing for a personal injury may not recover for money paid for medical services unless he shows that the charges incurred therefor are reasonable.—Galveston, H. & H. R. Co. v. Greb, Tex., 132 S. W. 489.

46. **Death**—Recovery for Loss of Services.—In an action by a father for wrongful death of his minor child, held, that he was entitled to recover nominal, if not substantial, damages for loss of services of the child.—Seaboard Air Line Ry. v. Moseley, Fla., 53 So. 718.

47. **Dedication** — Designation in Map. — A street shown on a dedicating map as extending to a public navigable river will be continued to a new water front made by the owner or subsequent owners by filling in tide lands under legislative permission.—McAndrews & Forbes Co. v. City of Camden, N. J., 78 Atl. 232.

48. **Deeds**—Delivery.—Where a deed passes into the custody and under the control of the grantees therein, and is filed for record, a strong presumption arises that it was delivered.—Anderson v. Woolley, Wash., 112 Pac. 271.

49.——Description.—A deed, which on its face contains two inconsistent descriptions, either of which will identify a different piece of propery, is void for uncertainty.—Hall v. Bartlett, Cal., 112 Pac. 176.

50.——Execution.—A deed must be proved as prescribed by the statute before it may be recorded, and, unless a deed has been duly proved, its registration is ineffectual to pass title as against creditors and purchasers.—Witherell v. Murphy, N. C., 69 S. E. 748.

51.——Latent Ambiguity.—A latent ambiguity is determined by the weight of the evidence, and, as a rule, is for the jury.—Safe Deposit & Trust Co. of Pittsburg v. Bovaird & Seyfang Mfg. Co., Pa., 78 Atl. 268.

52. **Descent and Distribution**—Expectancies.—A release by an heir in the lifetime of the ancestor of his interest in the estate of the ancestor held inoperative.—In re Thompson's Estate, S. D., 128 N. W. 1127.

53. **Divorce**—Adultery.—A husband's confessions of adultery, made to his wife and her sister, held insufficient without further corroboration to authorize a decree of divorce.—Howard v. Howard, N. J., 78 Atl. 195.

54. **Dower**—Priority—Dower, when assigned, becomes the paramount estate, and hence is preferred over incumbrances created after the marriage.—Radley v. Radley, N. J., 78 Atl. 194.

55. **Drains**—Change of Use.—A city granted an easement over land for laying drainage pipe held not entitled, without the landowner's consent, to substitute an open ditch.—Rolens v. City of Hutchinson, Kan., 112 Pac. 129.

56. **Electricity**—Res Ipsa Loquitur. — In an action against an electric light company for injuries to a customer while turning on an electric light bulb, evidence held to establish a prima facie case of defendant's negligence under the doctrine res ipsa loquitur.—Turner v. Southern Power Co., N. C., 69 S. E. 767.

57. **Equity**—Laches.—In cases of fraud, it usually takes something besides mere delay to make a chancellor close the door to relief, such as a change of conditions brought about by complainant's apparent acquiescence in the wrong.—Citizens' Savings & Trust Co. v. Illinois Cent. R. Co. (C. C. A.) 182 Fed. 607.

58. **Elections**—Candidates.—Votes at a primary election cast for a candidate known to be dead at the time held not to be counted so that the candidate receiving the next highest number was entitled to have his name go on the ballot at the general election.—State v. Frear, Wis., 128 N. W. 1068.

59.——Legislative Regulation.—A legislative interference with political party organization naturally impairing opportunity for members of any political party of substantial significance to efficiently maintain their organization held unreasonable.—State v. Phelps, Wis., 128 N. W. 1041.

60. **Evidence** — Patent Ambiguity. — Parol proof of extraneous facts is not permissible in the case of a patent ambiguity in a tax deed. —Reed v. Reed, Miss., 53 So. 691.

61. **Executors and Administrators**—Appointment.—Where a testator reposed personal confidence in two persons named as coexecutors with the wife, the court, on their refusal to act, could not appoint executors to carry out the power confided to the persons named.—Murdoch v. Murdoch, Miss., 53 So. 684.

62. **False Pretenses**—Elements of Offense.—The essence of the offense of obtaining money or property by false and fraudulent representations is the obtaining of the money or property by means of the false pretense.—State v. Morris, Mo., 132 S. W. 590.

63. **Federal Courts**—Jurisdiction.—The jurisdiction of a federal court was not granted by, and may not be annulled or impaired by, the law of any state.—Mechanics' Ins. Co. of Philadelphia v. C. A. Hoover Distilling Co. (C. C. A.) 182 Fed. 590.

64. **Ferries**—Federal Statutes.—A ferryboat plying entirely within the boundaries of a state, but in navigable water, which is accessible for general purposes of navigation to craft from other states and foreign countries, is subject to such statutes and regulations controlling navigation under the jurisdiction of the United States as are applicable to vessels engaged in such business, whether owned and operated by a private individual or corporation or by a municipality.—The Nassau, D. C., 182 Fed. 696.

65. **Forgery**—Sufficiency of Evidence.—In a prosecution for forgery, where the defendant had been conducting business under the name of his servant and had written letters under that name, evidence held insufficient to support a conviction of forgery for signing servant's name.—Fench v. State, Tex., 132 S. W. 478.

66. **Frauds, Statute of**—Agreement in Consideration of Marriage.—The statute of frauds does not apply to a parol antenuptial contract of marriage executed by both parties thereto. —Ferrell v. Stanley, Kan., 112 Pac. 155.

67.——Original or Collateral Promise.—A promise by the defendant that he would indemnify plaintiff for any loss he might sustain by reason of becoming surety upon a bail bond held an original promise not within the statute of frauds.—McCormick v. Boylan, Conn., 78 Atl. 335.

68.——Pleading.—The defense that the claim sued on is within the statute of frauds is not available unless specially pleaded.—Dierks Lumber & Coal Co. v. Coffman Bros., Ark., 132 S. W. 654.

69.——Pleading.—The defense that a parol promise is void, in that it relates to an interest in land, must be pleaded.—Rogers v. Gennett Lumber Co., N. C., 69 S. E. 788.

70. **Fraudulent Conveyances**—Validity. — A gift is valid as to subsequent creditors unless made by the donor with an actual intent to defraud such creditors.—Miles v. Monroe, Ark., 132 S. W. 643.

71. **Garnishment**—Property Subject.— Where a creditor of a depositor depositing money in a bank to his credit, followed by the word "agent," attempted to garnish the fund, the fact that the depositor is in possession and control of the fund is prima facie evidence of his ownership.—Sisbee State Bank v. French Market Grocery Co., Tex., 132 S. W. 465.

72. **Gifts** — Subsequent Mortgage. —Where a valid gift has been made, the donor cannot defeat the donee's right to the property by a subsequent mortgage thereof.—Miles v. Monroe, Ark., 132 S. W. 643.

73. **Guardian and Ward**—Purchase of Ward's Property.—The rule forbidding trustees from taking a position inconsistent with their duties as trustees held to apply to a guardian and ward during the existence of the guardianship relation.—Haynes v. Montgomery, Ark., 132 S. W. 651.

74. **Homicide**—Burden of Proof.— Where accused admitted that he killed decedent with a pistol, the burden was upon him to show that he did it in self-defense or to offer evidence to reduce the crime to manslaughter.—State v. Simonds, N. C., 69 S. E. 790.

75.——Evidence.—Testimony was admissible that accused bought a knife about a week before the homicide; the knife being identified as that used in the fatal difficulty.—Bradley v. State, Tex., 132 S. W. 484.

76. **Husband and Wife**—Estate by Entirety. There may be an estate by entirety in personal property, and as between husband and wife, the instrument creating such estate need not state that it does so.—Ryan v. Ford, Mo., 132 S. W. 610.

77. **Indians**—Sale of Liquors.—The state, in the exercise of police power, may prohibit the sale of liquor to Indians or those of Indian descent.—State v. Nicolls, Wash., 112 Pac. 269.

78. **Indictment and Information**— Charging Two Offenses.—An information charging the embezzlement of a sum which amounted to a felony authorized a conviction of the lesser grade of misdemeanor (embezzlement).—State v. Martin, Mo., 132 S. W. 595.

79.——Joinder of Offenses.—Though by statute burglary and larceny may both be charged in the same indictment or information, either in the same count or in different counts, they should be treated as separate offenses.—State v. Lackey, Mo., 132 S. W. 602.

80.——Names of Witnesses.—The information should be quashed if no witnesses' names are indorsed thereon as required by statute, unless the prosecuting attorney offers to supply such omission.—State v. Martin, Mo., 132 S. W. 595.

81. **Injunction**—Injury to Business.—An employe held properly enjoined from using list of names of customers on a certain route, on which he made sales for his employer, when he entered the service of a competitor in the same line of business.—Grand Union Tea Co. v. Dodds, Mich., 128 N. W. 1090.

82.——Liability for Damages.—Where no bond is required on issuance of an injunction, there is no liability for damages, unless the injunction was obtained maliciously.—Doyle v. City of Sandpoint, Idaho, 112 Pac. 204.

83. **Intoxicating Liquors**—Res Judicata.—An acquittal on a criminal charge is not a bar to a civil action brought against the defendant by the state, though to recover it must prove him

guilty of the offense.—State v. Roach, Kan., 112 Pac. 150.

84.——Right to Sell.—There is no inherent right in a citizen of a state, or of the United States, to sell intoxicants at retail.—Mix v. Board of Com'rs of Nez Perce County, Idaho, 112 Pac. 215.

85. **Landlord and Tenant** — Disturbance of Possession.—A tenant held not evicted by the act of the landlord in letting to another who carried on a business incompatible with the occupancy of the first.—Bilicke v. Janss, Cal., 112 Pac. 201.

86. **Larceny**—Elements of Offense.—The ownership of the property stolen is an essential element in larceny and must be properly alleged in the indictment or information, if the name of the owner is known and proved.—State v. Lackey, Mo., 132 S. W. 602.

87. **Licenses**—Occupations.—While the state may impose taxes in the form of licenses upon different occupations within its limits, such power must be exercised in obedience to the federal Constitution.—State v. Bornstein, Me., 78 Atl. 281.

88. **Life Insurance**—Foreign Company. — A foreign insurance company withdrawing from the state in good faith to escape compulsion of Act N. C. Feb. 10, 1899, requiring it to become a domestic corporation if it desires to continue business in the state, may revoke its appointment of the State Insurance Commissioner to receive service of process so far as claims of nonresidents are concerned which are assigned after withdrawal, though Laws N. C. 1899, c. 54, continues the authority of the commissioner so long as any liability of the company shall remain outstanding in the state.—Hunter v. Mutual Reserve Life Ins. Co., 31 Sup. Ct. 127.

89.——Representations. —Representations are no part of the contract of insurance, but are collateral or preliminary to it, and, unlike a false warranty, they will not invalidate the contract because they are untrue unless they are material to the risks, but need only be substantially true.—National Annuity Ass'n v. Carter, Ark., 132 S. W. 633.

90. **Limitation of Actions**—Preventing Running of Statute.—One holding overdue obligations held not to prevent the running of limitations by providing in his will that his executor should not institute any proceedings to enforce the obligations during a specified period.—Swinley v. Force, N. J., 78 Atl. 249.

91. **Mandamus**—Grounds.—Mandamus is an appropriate remedy to compel the restoration of an officer who has been wrongfully deprived of his position.—State ex rel. Case v. Wilson, Mo., 132 S. W. 625.

92. **Master and Servant** — Assumption of Risk.—Although assumption of risk is an affirmative defense, and must usually be pleaded, it may be taken advantage of where plaintiff's proof shows an assumption of risk by him.—Yazoo & M. V. R. Co. v. Woodruff, Miss., 53 So. 687.

93.——Contributory Negligence.—Whether an employe injured by coming in contact with an unguarded shaft which the master, as required by the factory act of 1905 (Laws 1905, c. 84), should have guarded, was guilty of contributory negligence held for the jury.—Cook v. Danaher Lumber Co., Wash., 112 Pac. 245.

94.——Fellow Servants.—A servant employed in a building as a member of a rivet gang and a co-servant engaged in piling steel beams in the yard of the factory held not fellow servants.—Mosher Mfg. Co. v. Boyles, Tex., 132 S. W. 492.

95.——Injury to Servant.—Where employment of minor is unlawful because exposing him to danger and he is injured by such exposure, violation of the law is the proximate cause of the injury.—Casteel v. Pittsburg Vitrified Paving & Building Brick Co., Kan., 112 Pac. 145.

96.——Obedience to Foreman.—Where deceased was called by his foreman to work in a mine after the foreman had pronounced the place safe, deceased was not bound to examine it for himself. — Cox v. Wilkenson Coal & Coke Co., Wash., 112 Pac. 231.

97.——Questions for Court and Jury.—While generally the construction of rules is for the court, where there is reasonable doubt about their applicability, the question is for the jury.—Cincinnati, N. O. & T. P. Ry. Co. v. Lovell's Adm'r., Ky., 132 S. W. 569.

98.——Safe Appliances.—It is the duty of the master to furnish the servant with proper appliances for dangerous work, if there be any such in general use, but the master is not obliged to adopt the latest appliance before it comes into general use.—Baily v. Meadows Co., N. C., 69 S. E. 746.

99.——Torts of Servant.—The setting on fire of a pile of cornstalks by a farmhand which he was merely directed to cut and pile held not within the scope of his employment, so as to make his employer liable for the damage from the spread of the fire.—Marlowe v. Bland, N. C., 69 S. E. 752.

100. **Mines and Minerals**—Eviction.—Where the objects of a mining lease was the making of profits by the lessee, he could, in case of wrongful eviction, recover anticipated profits on adequately proving the same.—Smuggler-Union Mining Co. v. Kent, Colo., 112 Pac. 223.

101.——Mineral Waters.—Mineral waters are not classed as minerals; nor is mineral oil a mineral within the intendment of article 230, Const. 1898, which exempts from taxation property employed in mining operations.—J. M. Guffey Petroleum Co. v. Murrel, La., 53 So. 705.

102. **Mortgages** — Dedication of Mortgaged Land.—Rights of a city in a street through mortgaged property dedicated by the mortgagors without assent of the mortgagee held cut off by foreclosure.—Kiernan v. Jersey City, N. J., 78 Atl. 228.

103. **Municipal Corporations** — Neglect of Duty.—An action will not lie against a municipality at the instance of an individual who has sustained special damages in consequence of the neglect of the municipality in the performance of a public duty.—Bisbing v. Asbury Park, N. J., 78 Atl. 196.

104.——Powers.—Municipal corporations possess only such powers as are granted in express words or those necessarily incident to or implied in the powers expressly granted.—State ex rel. Case v. Wilson, Mo., 132 S. W. 625.

105.——Street Improvements.—Adjoining unplatted property assessed for the opening of a street will be presumed to have participated in the common benefit flowing from the improvement as a whole.—In re South Shilshole Place, Wash., 112 Pac. 228.

106. **Navigable Waters**—Access to Wharf.—The owner of a wharf at the edge of deep water held to have a right of access to deep water which could not be interfered with by a railroad drawbridge, though sanctioned by both state and federal authority, without compensation.—Northern Pac. Ry. Co. v. S. E. Slade Lumber Co., Wash., 112 Pac. 240.

107.——Islands.—As the common-law rule as to what waters are deemed navigable obtains in Kentucky, a grantee of land bounded on a river above the ebb and flow of the tide is entitled to all islands lying between the mainland and the center of the thread of the current.—Wilson v. Watson, Ky., 132 S. W. 563.

108. **Negligence**—Licensee.—One who invites another on his premises is liable for injuries if such premises are dangerous, and he knew or could have by reasonable care ascertained the danger, and the licensee is guilty of contributory negligence if he does not take ordinary precautions to avoid danger.—Weatherford Machine & Foundry Co. v. Pope, Tex., 132 S. W. 503.

109.——Proximate Cause.—To fix a liability for damages arising from subsequent accidents, it must appear that they are so bound to the original negligence complained of as to make a natural whole, and that there was no independent intervening cause.—Texas & N. O. R. Co. v. Murray, Tex., 132 S. W. 496.

110. **Principal and Agent**—Agent's Powers.—One dealing with an agent to sell land, whose

authority must be in writing, held charged with limitations on his power disclosed by his power of attorney—Thompson v. Green River Power Co., N. C., 69 S. E. 756.

111.——Authority of Agent.—Except by reason of unusual circumstances which render outside assistance necessary to carry forward a train, a conductor has no authority to make contract of employment.—St. Louis, I. M. & S. Ry. Co. v. Jones, Ark., 132 S. W. 636.

112.——Discharge of Surety.—A surety on a building contractor's bond held put on notice so as to make it his duty to make inquiry in the absence of which mere silence of the obligee was not fraud precluding a recovery on the bond.—United States Fidelity & Guaranty Co. v. Means & Fulton Iron Works, Tex., 132 S. W. 536.

113. **Railroads**—Absence of Headlight.—The running of a train at night over a public crossing without a headlight burning on the engine is at least evidence of negligence.—Seaboard Air Line Ry. v. Moseley, Fla., 53 So. 718.

114.——Injury to Alighting Passenger.—Failure of flagman to notify passenger standing on the step that the train is in motion, and that it is dangerous to alight, will not charge the company with negligence.—Morris v. Illinois Cent. R. Co., La., 53 So. 658.

115.——Injury to Person Assisting Passenger.—One who gets upon a train to assist another passenger may assume, without giving notice of his intention to get off, that the train will remain the usual time.—Texas Cent. R. Co. v. Hutchingson, Tex., 132 S. W. 509.

116. **Receiving Stolen Goods**—What Constitutes.—To constitute the offense of receiving stolen goods, it is not necessary that they should have been received from the thief, but only that they should have been received and concealed with unlawful intent, and with knowledge that they were stolen.—State v. Alderman, Conn., 78 Atl. 331.

117. **Reference**—Power of Court.—The court cannot set aside the method of trial agreed on by the parties, when there is a consent to a reference.—Rogers v. Gennett Lumber Co., N. C., 69 S. E. 788.

118. **Reformation of Instruments** — Laches.—In a suit to reform a deed, the fact that the parties in whose interest the deed was sought to be reformed were infants at the time of its execution, and were not connected with any mistake made by the parties to the deed at that time, is no ground for refusing reformation.—Kelley v. Hamilton, Ga., 69 S. E. 724.

119. **Removal of Causes**—Fraudulent Joinder.—Where a railroad employe had the legal right to sue the nonresident railroad company and its resident engineer jointly for the injury, that they were sued together to prevent a removal to the federal court held not a fraudulent joinder.—Dowell v. Chicago, R. I. & P. Ry. Co., Kan., 112 Pac. 136.

120. **Sales**—Consideration.—A transfer of personal property in consideration of marriage must antedate the engagement.—Miles v. Monroe, Ark., 132 S. W. 643.

121.——Life Estates.—A life estate may be sold without the consent of the life tenant only when it exists as an interest in land the remainder of which is in others who are entitled to possession with the life tenant or exclusive of his possession.—Radley v. Radley, N. J., 78 Atl. 194.

122.——Time of Payment.—In the absence of any stipulation in a contract of sale as to time or terms, cash payment on delivery is presumed.—Louisville Packing Co. v. Crain, Ky., 132 S. W. 575.

123. **Seduction**—Evidence.—The resemblance of the child of prosecutrix to accused on trial for her seduction is a circumstance which the jury may consider as tending to prove the criminal intimacy of the parties, but not the promise of marriage.—State v. Mallonee, N. C., 69 S. E. 786.

124. **Specific Performance**—Want of Mutuality in Contract.—Want of mutuality in a contract because the party suing thereon did not sign is not a defense to an action for specific performance.—Wiley v. Helen, Kan., 112 Pac. 158.

125. **Taxation**—Assessment.—Where the "J. M. Guffey Petroleum Company" had been previously assessed in the name of the "Guffey Oil Company" without complaint, held, that it could not enjoin a seizure of its property for taxes on the ground that it was an illegal and insufficient assessment; the name in which the assessment was made being sufficient to form the basis of a proper assessment.—J. M. Guffey Petroleum Co. v. Murrel, La., 53 So. 705.

126.——Tax Deeds.—Where the name of the grantee is not contained in the granting clause of a tax deed, and there is nothing in the deed which necessarily indicates the grantee, the deed is void.—Reed v. Reed, Miss., 53 So. 691.

127. **Telegraphs and Telephones.**—Delay in Delivery.—The regulations of a telegraph company as to the hours during which messages will be received and delivered held waived by the receipt of a message at the sending and receiving offices without informing the sender that the message could not then be delivered.—Carswell v. Western Union Telegraph Co., N. C., 69 S. E. 782.

128. **Trusts**—Death of Trustee.—The power conferred upon a trustee which involves personal confidence in him, terminates with his death.—Russell v. Hartley, Conn., 78 Atl. 320.

129.——Failure to Deliver Deed.—One held to be the equitable owner of land conveyed by her and her husband to another under an understanding that such other should reconvey to her, though the deed reconveying the land was never delivered to her.—Ryan v. Ford, Mo., 132 S. W. 610.

130.——Purchase of Trust Property. — The right to set aside a purchase of trust property by the trustee does not depend on unfairness of the transaction, but the beneficiary may, without showing actual fraud, have the purchase set aside.—Haynes v. Montgomery, Ark., 132 S. W. 651.

131. **United States**—Bond of Public Contractor.—A vessel building for the United States the title of which passes to the government as fast as paid for, is a public work within Act Aug. 13, 1894, requiring a bond from the contractor for the protection of laborers and materialmen.—Title Guaranty & Trust Co. of Scranton, Pa., v. Crane Co., 31 Sup. Ct. 140.

132. **Vendor and Purchaser** — Constructive Notice.—Where the records disclosed that one William McG. made a mortgage and subsequently mortgaged the same property as J. W. McG., the subsequent mortgagee could not contend that, because of the omission of the first name "James" in recording the first mortgage he was thereby relieved from constructive notice.—Loser v. Plainfield Savings Bank, Iowa, 128 N. W. 1101.

133.——Estoppel. — Where a vendor receives the entire price of property sold and acquiesces in the transaction with full knowledge of the facts, he is estopped from claiming a rescission of the contract.—Keating v. Keating Mining Co., Idaho, 112 Pac. 206.

134.——Time as Essence of Contract.—Naming of a day on or before which a contract to convey land should be consummated held not to make time of the essence of the contract.—Wiley v. Helen, Kan., 122 Pac. 158.

135. **Water and Water Courses** — Riparian Rights.—An upper riparian owner may dam the waters of a stream for the purpose of floating logs therein, if such use did not interfere with the water rights of a lower owner.—San Joaquin & Kings River Canal & Irrigation Co. v. Fresno Flume & Irrigation Co., Cal., 112 Pac. 182.

136. **Wills**—Construction.—A will should be held to be revoked by a codicil as repugnant thereto only in so far as such construction effectuates testator's intention.—Russell v. Hartley, Conn., 78 Atl. 320.